IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11531 of 2002
With
SPECIAL CIVIL APPLICATION NO.11536 TO 11545 OF 2002

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RATILAL P PATEL - Petitioner(s)

Versus

DIRECTOR OF MUNICIPALITIES & 2 - Respondent(s)

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Appearance :
MR JB PARDIWALA for Petitioner(s) : 1,
MR I.M. PANDYA, AGP, for Respondent(s) : 1,
MR VM TRIVEDI for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 19/12/2005

ORAL JUDGMENT

1. In all the above petitions the petitioners have challenged the order of termination passed by the respondent Nagarpalika.

2. The petitioners were appointed as Octroi Peons vide a Resolution passed by the Octroi Committee of the then Pardi Nargar Panchayat. Thereafter by passing necessary resolution the petitioners were promoted to the post of Clerk. In pursuance of the Fourth Pay Commission, their pay scales were fixed accordingly. Even the recommendations of the Fifth Pay Commission were accepted and implemented in the case of the petitioners. Director of Pardi Nagar Palika adressed letter dated 11th October 2002 to the Administrator requesting to initiate appropriate action to terminate the services of the petitioners as they are not possessing requisite qualifications. In pursuance of the same the Administrator of Pardi Municipal Borough terminated the services of the petitioners after giving notice. The said orders have been challenged in these petitions.

3. Mr. J.B. Padiwala appearing for the petitioners submitted that giving one month's notice without complying with provisions of Section 25-F of the Act will not validate the action of the authority. He submitted that the petitioners have put in long years services and they have also been promoted from time to time. He further submitted that they have been termination in violation of principles of natural justice and after a period of more than decades the respondent cannot terminate the services of the petitioners.

4. Mr. I.M. Pandya, learned AGP, appearing for the respondent submitted that the orders passed by the respondent are just and proper and notice and notice pay have been given and therefore there is no question of violation of any of the provisions. He further submitted that the petitioners do not possess requisite qualifications and therefore, they cannot be continued in service.

5. As a result of hearing and perusal of the record it is clear that after appointment the petitioners have been given promotion from time to time. Benefits of Fourth and Fifth Pay Commissions were extended to them. They have put in many years of continuous service as regular employees. It is also evident from the record that the very same Director of Municipality who has written the communication in pursuance of which the termination orders were passed, himself has on two occasions given benefits of Fourth and Fifth Pay Commission recommendations.

6. It is, of course true that one month's notice' was given. However, there is nothing to show that provisions of section 25-F of the Act are complied with.

7. In any case the impugned orders have been passed merely on the basis that they are not holding requisite qualifications. Such an order after taking service of many years is not tenable in law. I am, therefore, of the view that the orders of termination are illegal and bad in law. The respondent has,

with their knowledge, continued the petitioners for long and it would not be appropriate for them to take such actions after long lapse of time. In the case of Patel Kantilal Ambalal and others Vs. Government of Gujarat and others, reported in 1993(1) GCD 690 (Guj) it is held that if the Government wanted to take any action on the basis of the defect in the appointment, then the same should have done promptly, and after a lapse of seven years such action is not justified.

8. Even otherwise, many of the petitioners have become over-aged and on the verge of retirement. Therefore, even on sympathetic ground and looking to the long service put in by the petitioners, the impugned orders are required to be quashed and set aside.

9. In the premises aforesaid, the impugned orders are quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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